IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 512 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DEVJIBHAI KHUSHALBHAI MARU

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 512 of 2000

MS NIRALI B MUNSHI for Petitioner No. 1

MR SUDHANSHU PATEL, APP for Respondent No. 1

MR ASHISH M DAGLI for Respondent No. 2-5

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 16/04/2002

ORAL JUDGEMENT

1. Heard ld. counsel appearing for the parties.

2. This Criminal Revision Application is preferred against the order of acquittal recorded by ld. Special Judge (Court No.17), Ahmedabad city in Atrocity Criminal

Case No. 2/2000. All the accused have been prosecuted and tried for the offences punishable under Sections 341, 504, 506(1), 294(b) R/w Section 114 of IPC and Section 3(1)((iv)(x) of The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act"). According to the prosecution, some incident had occurred on 7.5.1999 and thereafter, an application was given to the concerned police station by residents of the society headed by the complainant, but no formal complaint was registered. So, according to the complainant, members of the society had approached MLA of their constituency and on his recommendations, on 9.5.1999, formal complaint came to be registered. Ultimately, the accused were arrested and tried under the IPC as well as Atrocities Act by the Special Court. By the impugned judgment, ld. Special Judge acquitted the accused.

3. There is no formal appeal against the acquittal by the State of Gujarat. As per settled legal proposition, scope of exercising revisional jurisdiction in this contingency is very limited. The Court, if is satisfied after hearing the arguments of ld. counsel appearing for the parties that there is no perversity or error apparent on the part of ld. Special Judge in appreciating oral as well as documentary evidence led by during trial, this Court can refuse to exercise revisional powers and dismiss the Criminal Revision Application. In the instant case, there is no perversity or error apparent on face of record in appreciating oral as well as documentary evidence by the ld. Special Judge.

4. (i) When this court is in agreement to the finding and in adopting reasons recorded by the trial court, no independent and formal reasons are required to be recorded. However, in view of recent decision of the Apex Court in the case of State of U.P. v/s Kamarujjama and ors. reported 2002(3) SCC p. 342, High Court should assign reasons even when adopting the reasons recorded by the trial Court. (ii) It would be proper to mention that plain reading of the complaint has created an impression in the mind of this Court that the real dispute between the complainant and members of the society headed by the complainant is a property dispute. Accused are residing in their house since 1975 and eye witness examined by the prosecuted had entered the society after erection of the house by the accused persons. It is in evidence that real dispute must have cropped up because of erection of water tank on the land adjacent to the house of the accused. However, said construction is made in the year 1995. It in evidence that till 1999, no steps against alleged encroachment were taken by the Co.Op. Society of

the complainant. Cross-examination of P.W.2 reveals that some construction had started in the month of May 1999 to erect a wall. (iii) There is no cogent evidence to show that accused had tried to obstruct the road or any path which has been used by the complainant or the members of the society. Complainant had left the society since years and has started residing in Jivrajpark Area. So obviously, he had no personal knowledge about the alleged incident occurred on 7.5.1999. Even complainant could have proved the fact that so called encroachment is recent and construction is very fresh but he failed in aducing the evidence. Only witness examined by the prosecution to prove the incident of 7.5.1999 is P.W.2 Bhaijibhai Makabhai Solanki. He has not been corroborated by any independent evidence. There is no evidence, documentary or oral, to show that accused persons have encroached upon the land owned and occupied by the society headed by the complainant. (iv) Document exh.23 only indicates that the society had purchased entire piece of land and Savganpark Co.Op. Housing Society had erected certain blocks on that land. There is nothing on record to show that which part of the land owned by the society has been encroached upon. Area of encroachment is also not stated by any witness exactly. When complainant intends to prove the case beyond reasonable doubt qua offences punishable under the Atrocities Act, it should be proved positively that the accused have wrongfully occupied or cultivated any land owned or allotted to the members of SC community. Evidence as well led by the prosecution qua this particular offence is very vague and insufficient. There is no direct evidence of insult of any member of the SC or ST community. Allegations in complaint and evidence led by P.W.2 Bhaijibhai is very general in nature. Prosecution has failed in proving the case as put forward in the complaint before the Spl. Court and ld. Special Judge has rightly acquitted the accused. This is a case of inadequacy of proof which is a basic finding recorded by the ld. Special Judge and as this finding being legal, scope of interference is not there at all and, therefore, there is no merits in this revision.

6. While parting with the judgment, it would be beneficial to quote the say of the Apex Court where the well established principle has been reiterated in case of Hatrisinh M. Vasava vs. State of Gujarat, reported in 2002(3) SCC P. 475, where the Gujarat High Court had reversed the finding of acquittal recorded by trial court. It has been observed in para-11 of the said judgment that:-

" The settled position of law regarding the powers to be exercised by the High Court in

> an appeal against the order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is based, it will not interfere with an order of acquittal because with the passing of an order of acquittal the presumption of innocence in favour of the accused is reinforced. The paramount consideratin of the court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is no less than from the conviction of an innocent. .... Probable view taken by the trial court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. "

6. For the reasons aforesaid, there is no merits in this Criminal Revision Application and the same is hereby dismissed. Impugned judgment and order dated 31.8.2000 passed by ld. Special Judge, Court No.17, Ahmedabad in Atrocity Criminal Case No.2/2000, is hereby confirmed. Rule is discharged.

16.4.2002 [C.K. BUCH, J]
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